



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO 16 OF 2018

WESLEY MARANGA ROBINSON GICHABA ... APPLICANT/ADVOCATE

VERSUS

JAJNIKANT KARSANDAS SOMAIA.....RESPONDENT/CLIENT

JUDGMENT

By a notice of motion dated 22.1.18, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

THAT Judgment be entered and a decree do issue for the sum of Kshs. 1,350,611.75/- as certified by the Registrar in Kisumu HCMISC, CIVIL APPLICATION NO. 184 OF 2014 as per a certificate of costs dated 16.06.15 with interest at court rates from 16.6.15

The motion is premised on the grounds on the body of the application and the supporting affidavit of the applicant, advocate sworn on 22nd January, 2018. He avers that the client retained him to act for it in Kisumu HCCC NO. 66 of 2008. That the bill of costs in respect of services rendered was taxed on 16.06.15 for the sum of **Kshs. 1,350,611.75/-** and a certificate of taxation was issued for the said sum. That the client has not paid the said amount and the applicant requests for judgment for the entire sum.

When the application came for hearing on 15.2.18, the respondent, though served, did not attend or send a representative. The application is therefore not opposed.

In the case of Musyoka & Wambua Advocates v Rustam Hira Advocate (2006) eKLR it was held: -

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....

In the present case, there is no allegation that the Advocate had no instructions to act for the Kisumu HCCC NO. 66 of 2008 for which costs were taxed and so, there cannot be a dispute as to retainer. As it stands now the Certificate of Taxation has not been set aside or altered. In the circumstances, I see no reason to deny the Advocate, judgment as sought.

I have considered the provisions of Rule 7 of the Advocates Remuneration Order which provides: -

“An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client,

providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of Costs. There is no evidence to show when the bill of costs was served. Applicant seeks interest from date of taxation but this court allows interest to accrue 30 days from date of taxation.

The upshot of this is that the notice of motion dated 22.0.18 succeeds and is allowed in the following terms:

- a. Judgment is hereby entered for the advocate against the Respondent for the sum of Kshs. 1,350,611.75/-**
- b. Interest shall accrue on the taxed costs at 14% per annum from 16.07.15 until payment in full**
- c. The Advocate will also have the costs of this application.**

DATED AND DELIVERED ON THIS 15th DAY OF February 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix and Carolyne

For the Applicant - Mr. Gichaba

For the Respondent - N/A